

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of Petition :  
of :  
CASALINA CORPORATION :  
for redetermination of deficiency of :  
franchise tax under Article 9-A of :  
the tax law for 1968. :  
- - - - -

Casalina Corporation having filed petition for redetermination of deficiency under Article 9-A of the tax law for 1968 and a hearing having been held on October 28, 1971, before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing the taxpayer was represented by Leon Bizar, attorney and accountant for the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated in South Carolina on February 2, 1965 and is the successor to Greenvale Hills Corporation, a New York corporation formed on July 14, 1936 which was dissolved pursuant to a tax free reorganization and liquidation in which its assets were transferred to the successor.

(2) The taxpayer and its predecessor were engaged in the ownership, rental and sale of land in New York, North Carolina and South Carolina.

(3) The business of the corporation is directed by Mr. Hewlett W. Lewis, president of the corporation from offices of Lewis and Valentine, Inc. in New York, and from the office of John E. Willard, agent and attorney for the corporation, in Conway, South Carolina.

(4) Land owned by Greenvale Hills Corporation, the

predecessor corporation, located in North Carolina, was taken by the federal government in condemnation in 1953, 1958 and 1959.

(5) In 1968, the taxpayer, as successor to Greenvale Hills Corporation, was awarded compensation for the condemned property. Interest of \$229, 349.12 was received on the award and was included in federal taxable income.

(6) A New York State franchise tax report for 1968 was timely filed and the tax due was computed on average total capital allocated to New York. Entire net income was eliminated on the basis that all income resulted from federal condemnation in North Carolina.

(7) On August 17, 1970 notice of deficiency was issued as follows:

Entire net income	\$164,493.94
Business allocation per report filed	31.5%
Allocated entire net income	51,815.59
Tax at 7%	3,627.09
Tax per report	144.62
Deficiency	\$ 3,482.47

(8) Timely petition for redetermination of deficiency was filed contending that the interest was earned as the result of a condemnation of property outside New York and therefore, in order to provide for a fair and proper allocation of income attributable to New York, the Tax Commission should grant an equitable adjustment as provided for by Section 210.8 of Article 9-A of the tax law.

(9) All New York State franchise tax reports filed by Greenvale Hills Corporation were filed on a statutory basis using the three factor formula. All reports filed by Casalina Corporation, except 1968, were filed on a statutory basis, using the three factor formula.

(10) The taxpayer's South Carolina corporation tax return for 1968 indicates that it included in taxable income approximately 27% of the interest on the condemnation award. The remaining 73% was excluded on the basis that it was applicable to 1953 through 1964, prior to its formation as a South Carolina corporation. Copies

of North Carolina corporation tax returns have not been furnished by the taxpayer.

(11) Section 208.9 of Article 9-A of tax law provides in part:

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department, any modification required \* \* \*."

None of the exceptions or modifications in Section 208.9 provide for an exclusion of interest on a condemnation award.

(12) Section 210.8 of Article 9-A of the tax law provides in part:

"If it shall appear to the tax commission that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the state, the tax commission shall be authorized in its discretion, in the case of a business allocation percentage, to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, \* \* \*, (c) excluding one or more assets in computing such allocation percentage, \* \* \*, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the state, \* \* \*."

The State Tax Commission hereby

DECIDES:

(A) Notice of deficiency for 1968 issued on August 17, 1970 properly reflects the tax due by the three factor statutory formula.

(B) Since only 27% of interest income was allocated to South Carolina and none of the interest income was allocated to North Carolina, there is no inequity to the taxpayer in the allocation of 31.5% of such interest income to New York by the statutory formula.

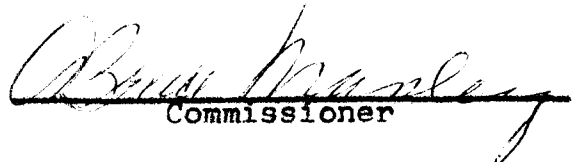
(C) . The notice of deficiency for 1968 is affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 18thday of September 1972.

STATE TAX COMMISSION

  
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President

  
\_\_\_\_\_  
Commissioner

  
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Commissioner